

# In the Supreme Court of the United States

OCTOBER TERM, 1968

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No. 672

UNITED STATES OF AMERICA, PETITIONER

v.

JOHN P. KING

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ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF CLAIMS

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REPLY BRIEF FOR THE UNITED STATES

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We submit this reply brief in order to focus on several contentions advanced by respondent and *amicus curiae* in attempting to meet our argument that the decision below represents a material and unwarranted expansion of the jurisdiction of the Court of Claims.

1. Both respondent and *amicus* repeat and premise much of their briefs on the argument made in respondent's opposition to the petition for certiorari. Their contention is this: since the Declaratory Judgment Act allows "courts of the United States" to issue declaratory judgments, and since 28 U.S.C. 451 defines "court of the United States" as "including

the Court of Claims," it must be concluded that Congress explicitly intended to confer jurisdiction upon the Court of Claims to render declaratory judgments against the United States (*e.g.*, Respondent's Brief, p. 13; *Amicus Brief*, p. 15).

This analysis falls far short of supporting respondent's position. In the first place, the argument ignores the essential operative language of the Declaratory Judgment Act (28 U.S.C. 2201). That Act does not merely say that "any court of the United States" may enter a declaratory judgment—it states that "[i]n a case of actual controversy *within its jurisdiction*, except with respect to Federal taxes, any court of the United States" may grant such relief (emphasis supplied). As we pointed out in our main brief, this is not a case within the subject matter jurisdiction of the Court of Claims since respondent does not assert a present right to receive money from the United States, and the Tucker Act does not provide a waiver of sovereign immunity with respect to the entry of declaratory judgments against the United States in any court.<sup>1</sup>

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<sup>1</sup>None of the cases cited at pp. 40-41 of the *amicus* brief support the position that the Tucker Act grants the federal courts jurisdiction to issue declaratory judgments in actions not involving a present claim for money. Of all those cases, only two allowed declaratory relief to be sought *against the United States* in the absence of a claim for money. One was *Luckenbach Steamship Co. v. United States*, 312 F. 2d 545 (C.A. 2), where an action was brought in admiralty seeking a declaration that the plaintiff was not liable to the United States for "additional charter hire" of certain ships. There was no argument that declaratory relief was unavailable (*id.* at 547). More-

A second error is in respondent's and the *amicus*' disregard of the history and function of Section 451. Section 451 was added to the Judicial Code, Section 308, August 7, 1939, Ch. 501, 53 Stat. 1225, in the Act establishing the Judicial Conference and other administrative machinery. See S. Rep. No. 426, 76th Cong., 1st Sess. As we noted in our main brief, both before and after this enactment the Court of Claims held itself without power to enter declaratory judgments; the same is true of numerous courts of appeals with respect to declaratory relief sought against the United States in the district courts.

Similarly, we see no significance in the fact that in 1948 the wording of the Declaratory Judgment Act was changed from "the courts of the United States" (48 Stat. 955) to "any court of the United States" (62 Stat. 964). There is no indication that Congress intended anything more than a rewording of the statute. See H. Rep. No. 308, 80th Cong., 1st Sess., p. A177. It would be novel, indeed, if this rewording

over, jurisdiction was rested on the Suits in Admiralty Act which provides that (46 U.S.C. 742) "any appropriate nonjury proceeding in personam may be brought against the United States" in circumstances where such an action in admiralty could be maintained against a private party. Thus the Act contains a waiver of immunity far broader than that found in the Tucker Act.

The other case is *Unger v. United States*, 79 F. Supp. 281 (E.D. Ill.). Contrary to the assertion of the *amicus*, jurisdiction was not rested on a statutory provision which allows actions on a "claim", but came under 38 U.S.C. 808, which gives "United States courts \* \* \* jurisdiction to review (by motion or otherwise)" decisions of the administrator of the National Service Life Insurance Act "on all questions of law ~~(and)~~ or fact". 79 F. Supp. at 282.

*See*

could be coupled with Section 451, which is merely a defining provision, to overcome the limitations directly expressed in the Declaratory Judgment Act as well as established rules governing the sovereign immunity of the United States. The only rational conclusion is that the Declaratory Judgment Act is limited in its application to cases otherwise within the subject matter jurisdiction of the court in which it is invoked.

2. Respondent and the *amicus*<sup>2</sup> notably fail to explain how either of their suits comes within the accepted limitations on the Court of Claims' subject matter jurisdiction. A declaratory judgment from the Court of Claims would at best entitle each of them to assert collateral estoppel effect in other suits against officials in the Department of Defense or the Maritime Administration. Nothing in either of the briefs refutes in any way our essential position in this case—that the Tucker Act grants the Court of Claims and the district courts subject matter jurisdiction only when there is an existing right to money. This Court long ago recognized that this jurisdictional

<sup>2</sup> In its brief (pp. 1-5), the *amicus* attempts to give the impression that current procedures require its members to wait many years for payment of subsidies. Although the determination of the final subsidy to be paid requires an accounting procedure that examines the events of a period that may be as long as a decade, substantial approximate payments are made quarterly throughout this period, much in the way that progress payments are made during the administration of a government contract. See 46 U.S.C. 1173(c), implemented by Accounting Instruction No. 29 (revised) and Article II-23 of the standard contract.

limit may not be abridged even by someone who claims a right to nominal damages. Respondents, the steamship companies, and the others who are now seeking declaratory judgments in the Court of Claims and who have no right to any monetary relief obviously have even a lesser right to invoke the jurisdiction of the federal courts.

Respectfully submitted,

ERWIN N. GRISWOLD,

*Solicitor General.*

WILLIAM D. RUCKELSHAUS,

*Assistant Attorney General.*

HARRIS WEINSTEIN,

*Assistant to the Solicitor General.*

MORTON HOLLANDER,

STEPHEN R. FELSON,

*Attorneys.*

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